IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 8503 OF 2006.

The Executive Engineer & Ors.... .... ..Petitioners
V/s
Shri Parshuram Dadu Nile.... ... .Respondent.

Mr.D.A.Patil, Adv. For the petitioners.

Mrs.Anjali N. Helekar, Adv. For Respondent.

CORAM: A.P.DESHPANDE, J.

27.2.2007.

PC:

Rule.

Rule made returnable forthwith.

Taken up for final hearing by consent of the parties.

This petition takes exception to the judgment and order passed by the Industrial Court rejecting Revision Petition filed by the present petitioners which in turn goes to confirm the order passed by the Labour Court dated 20.6.2005 allowing the complaint filed by the respondent. The respondent was appointed on 23.12.1965 as labourer under the present petitioners. He had put in uninterrupted service till 30.6.1991 on which date respondent made an application for grant of 30 days' earned leave. The respondent proceeded on

leave and he was supposed to joint duties on 1.7.1991. Respondent did not join the duties for almost a period of five years and for the first time approached the petitioners on 6.11.1996 with a view to join duties. Petitioners did not permit respondent to join duties but asked the petitioner to produce fitness certificate. Respondent thus approached the Civil Surgeon and obtained fitness certificate but despite production of certificate petitioners did not permit respondent to join the duties. On one hand the whereabouts of the respondent were not known and on the other hand the petitioners did not take any steps with a view to proceed against respondent for alleged act of misconduct in remaining absent for a period of five years. In these peculiar facts and circumstances respondent approached the Labour Court by filing complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the "Act"). The respondent contended before the Labour Court that because of mental illness the respondent had gone missing for a period of five years and as the family members of the respondent were also not aware of the whereabouts of the respondent they had lodged a report to the police about the respondent going missing. It is thus clear that the respondent had put in uninterrupted service from 23.12.1965 to 1.7.1991. One more date would be relevant to answer the issue involved in this petition and the same is date of attaining the age of superannuation. Respondent completed 60 years of age and was due for retirement on attaining age of superannuation on

31.7.2000. The Labour Court allowed the complaint by holding that the petitioners have indulged in unfair labour practice by not permitting the respondent to join duties after he produced the fitness certificate issued by a Civil Surgeon. The Labour Court after holding that the termination of the respondent constituted unfair labour practice under item 1(a) of Schedule IV of the Act, had directed the petitioners to cease and desist from unfair labour practice and further directed present petitioners to sanction extra ordinary leave without pay to the respondent for the period commencing from 1.8.1991 to 7.12.1996. The present petitioners were also directed to release all service benefits to the complaint including full back wages from 7.12.1996 onwards till the date of his superannuation. Said order passed by the Labour Court has been upheld in revision by Industrial Court. Aggrieved by the said order instant writ petition has been filed.

2. The learned Additional Government Pleader appearing for the petitioners has contended that there is absolutely no justification for directing payment of back wages for the period commencing from 7.12.1996 till the date of attaining of age of superannuation by respondent. He submits that for the reasons best known to the respondent he has remained absent for longer period of five years and thus no fault can be found with the action of the petitioners in not permitting him to join duties. *Per contra* learned counsel for respondent has contended that without holding departmental inquiry, it is wholly improper on the part of

petitioners to hold respondent guilty of misconduct and to restrain him from joining duties. In the submission of the learned counsel for respondent the mishap occurred in the life of respondent as he suffered mental ailment and as a consequence thereof respondent was not aware as to what had happened to him during the said five years i.e. from 1.8.1991 to 7.12.1996. Truly, speaking it is difficult to either blame the petitioners or the respondent for what transpired in the service career of the respondent. The equities need to be adjusted having regard to peculiar facts and circumstances of the case. The learned counsel on oral instructions from the respondent in all fairness gives up claim for back wages for the period commencing from 7.12.1996 till the respondent attained the age of superannuation i.e. 31.7.2000 provided respondent is granted other benefits such as pension, gratuity etc. treating the respondent as having retired on 31.7.2000. I feel ends of justice would meet by treating respondent as having retired from service on attaining the age of superannuation viz. 31.7.2000, however without payment of back wages from 1.8.1991 to 7.12.1996. Learned counsel appearing for the petitioners points out that power to grant extra ordinary leave vests with the Government under rule 16 and 48 of the Leave rules read with rule 63 and thus submits that appropriate direction need to be given to the respondent to make appropriate application to the Government with a view to have extra ordinary leave sanctioned. I have no doubt in my mind that respondent is entitled to pension under Rule 110(2)(b) of the Maharashtra

Civil Services (Pension) Rules, 1982. As the power to grant the extra ordinary leave when the absence is for more than five years is vested with the Government, in view of the peculiar facts and circumstances of the case I am of the clear view that exceptional circumstances prevail for the Government to exercise its discretion under Rule 16 for granting extra ordinary leave. Hence I pass the following order:

ORDER

Writ petition is partly allowed. The impugned order passed by the Labour Court stands modified on concession, by denying back wages to respondent for the period commencing from 7.12.1996 till his attaining age of superannuation i.e. 31.7.2000. Clause (v) in the operative part of the order passed by Labour Court shall cease to exist. I direct the respondent to make appropriate application to State Government under Rule 16 read with rule 48 and 63 of the Leave Rules and the State Government shall sanction extra ordinary leave as the absence of the respondent was in exceptional circumstances. I further direct the present petitioners to proceed to release the retirement benefits to the respondent by treating the respondent as having retired on completing age of superannuation with effect from 31.7.2000 under rule 110(2)(b) of Pension Rules. Rule made absolute in above terms.